



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Director

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Tidewater Regional Director
(757) 518-2000

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Mr. John Paul Wright

SECTION A: Purpose

This is a consent order issued under the authority of Virginia Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and Mr. John Paul Wright for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of the Department.
6. "Order" means this document, also known as a consent order.
7. "Regulations" means the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 *et seq.*).

8. "Mr. Wright" means Mr. John Paul Wright, owner and operator of JSW Company.
9. "Facility" means the business owned and operated by Mr. Wright located at 3979 Pughsville Road, Suffolk.
10. "CDD" means construction, demolition, and debris and is further defined in the Regulations.

SECTION C: Findings of Facts and Conclusions of Law

1. Mr. Wright owns and operated JSW Company, a material recovery facility, located at 3979 Pughsville Road, Suffolk.
2. On May 24, 2000, Department staff inspected the Facility. The investigation revealed construction, demolition, and debris (CDD) waste was being brought onto the site, recyclable materials were segregated, and the remaining waste was disposed off site. DEQ provided a Request for Corrective Action form to Mr. Wright during the inspection and issued a Warning Letter dated June 2, 2000 reiterating the inspection findings and applicable regulatory and statutory citations.
3. Department staff again inspected the Facility on July 13, 2000. The inspection revealed the Facility was accepting CDD waste material.
4. The Department hand delivered a Notice of Violation on August 16, 2000 to Mr. Wright regarding the operation of the Facility without a permit from the Director.
5. On October 20, 2000, a complainant notified the Department that JSW Company was continuing to bring waste onto the Facility.
6. On November 20, 2000, Department staff met with Mr. Wright to discuss the solid waste management operations being conducted at the Facility and the requirement for a permit. Department staff advised Mr. Wright to cease operations until a permit was issued.
7. The Department conducted additional site inspections between January 23, 2001 and April 22, 2002 as follows:
 - a. Department staff observed CDD waste and heavy equipment at the Facility during inspections conducted on January 23, and January 31, 2002.

b. Department staff observed CDD waste, heavy equipment, and active waste sorting operations at the Facility during inspections conducted on July 19, and September 12, 2001

c. A site visit conducted February 7, 2002 revealed four loads of CDD waste and a JSW truck located on site.

d. The four loads of CDD waste observed during the February 7 site inspection were again observed during a February 14, 2002 site visit.

e. On February 22, 2002 Department staff conducted a site visit and observed the same four loads of CDD waste; an additional small amount of CDD had been added to one of the existing piles.

f. On April 25, 2002 Department staff inspected the Facility and found that the CDD waste observed during the previous inspection was unchanged.

8. Records indicated Facility access must be obtained through City of Suffolk property. By letter dated October 23, 2001, the City of Suffolk advised that they were securing the access road to the Facility.

9. 9 VAC 20-80-10 defines "treatment" as any method, technique or process, including but not limited to incineration, designed to change the physical, chemical or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation or recovery.

10. 9 VAC 20-80-90 and Code § 10.1-1408.1.A. state: "No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director." The Director has not issued Mr. Wright permit to conduct solid waste management operations at the Facility.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it in Va. Code §§ 10.1-1182 *et seq.*, and §§ 10.1-1402, 10.1-1405, and 10.1-1455, orders and Mr. Wright agrees that:

1. Mr. Wright shall conduct all solid waste management activities within the Commonwealth of Virginia in accordance with the Virginia Solid Waste Management Regulations and §10.1-1400 *et seq.* of the Code of Virginia.
2. Mr. Wright agrees to pay a civil charge of \$ 8,000.00 within 30 days of the effective date of the order in settlement of the violations cited in this Order. Payment shall be by check,

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certified check, money order, or cashier's check, indicate Mr. Wright's social security number, be made to "The Treasurer of Virginia, Department of Environmental Quality," and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Wright, for good cause shown by Mr. Wright, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Wright admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Wright declares he has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Mr. Wright to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Mr. Wright shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mr. Wright must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Wright shall notify the Director and the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Regional Office within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. Mr. Wright consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
10. This Order shall continue in effect until the Department is satisfied that Mr. Wright has completed all terms of the Order. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Wright from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

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11. This Order shall become effective upon execution by both the Director or his designee and Mr. Wright. Notwithstanding the foregoing, Mr. Wright agrees to be bound by any compliance date which precedes the effective date of this Order.

Francis L. Daniel

Francis L. Daniel, Regional Director for
Robert G. Burnley
Department of Environmental Quality

March 12, 2003

Date

Commonwealth of Virginia

City/County of Portsmouth

The foregoing instrument was acknowledged before me this January 28th, 200~~3~~^{new} by

John Paul Wright

John Paul Wright

1/28/03

Date

Kera M. Bruston

Notary Public

My commission expires: 12/31/06